UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NAOMI OWENS n/k/a NAOMI COLLINS; INELL BRUNER; JAY C. GARRETT; THE BROTHERHOOD BANK & TRUST COMPANY; UNION MORTGAGE COMPANY, INC.; RONCO CONSTRUCTION COMPANY; COUNTY TREASURER, Tulsa County, Oklahoma; BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma; and SHEILA GAE NEWLIN,

Defendants.

FILED
JUN 10 1991
Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-1034-B

ORDER

NOW, on this 10th day of June, 1991, there came on for consideration the Motion of the United States to amend the Judgment of Foreclosure previously entered on November 28, 1990. The Court finds said Motion is well taken.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Judgment of Foreclosure previously entered on November 28, 1990, be and is amended by deleting the words, "with appraisement," appearing in the third paragraph on page 8 of the Judgment and inserting in lieu thereof the words, "without appraisement."

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

20437/msc

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 10 1991

Jack C. Silver, Clerk
U.S. DISTRICT COURT

FRED M. HAMMICK, JR., and
GLORIA JANELLE HAMMICK,

Plaintiffs,

vs.

ARMSTRONG CORK & SEAL, et al.

Defendants.

Case No. 89-C-569-EB

ORDER OF DISMISSAL WITH PREJUDICE
OF BORG WARNER CORPORATION

NOW ON this 10th day of June, 1991, this matter comes on for Hearing before the undersigned Judge of the District Court upon Joint Stipulation of Dismissal as to Defendant, Borg Warner Corporation, only.

The Court being fully advised in the premises finds that Plaintiffs and Defendant, Borg Warner Corporation, have fully and completely settled all claims involved in this litigation as between these parties only, and therefore finds that this matter should be dismissed with prejudice as to Defendant, Borg Warner Corporation, only.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this matter should be and same is hereby dismissed with prejudice as to Defendant, Borg Warner Corporation, only.

IT IS FURTHER ORDERED that between Plaintiffs and Defendant, Borg Warner Corporation, each party is to bear their own attorney fees, Court costs and expenses.

IT IS SO ORDERED.

S/ THOMAS R. BRETT
U.S. DISTRICT JUDGE

APPROVED AS TO FORM & CONTENT:

JOSEPH F. BRUEGGER
Attorney for Plaintiffs

EUGENE ROBINSON, Attorney for
Defendant, Borg Warner Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, V. ASARCO, INC., BLUE TEE CORPORATION, CHILDRESS ROYALTY COMPANY, GOLD FIELDS MINING CORPORATION, NL INDUSTRIES, INC., ST. JOE MINERALS CORP., Defendants	91 C 263 B Civil Action No.

CONSENT DECREE

WHEREAS, The United States of America ("Plaintiff" or "United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") has filed a complaint against Asarco, Inc., Blue Tee Corporation, Childress Royalty Company, Gold Fields Mining Corporation, NL Industries, Inc., and St. Joe Minerals Corp. ("Defendants") pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 42 U.S.C. § 9607(a) ("CERCLA") seeking recovery of costs incurred by the United States in responding to the release or threat of release of hazardous substances at or in connection with the site identified by EPA in its June 6, 1984 Record of

Decision ("ROD") as the Tar Creek Site, Ottawa County, Oklahoma (the "Site");

WHEREAS, the United States has incurred response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site;

WHEREAS, the United States asserts that the alleged release of hazardous substances into the environment at and from the Site may have caused damage, including property damage;

WHEREAS, the Defendants desire to settle their alleged liabilities for response costs incurred by the United States with respect to the Site, thereby avoiding costly and complex litigation among the parties;

WHEREAS, the United States and Defendants have each stipulated and agreed to the making and entry of this Consent Decree ("Decree") without any adjudication of any issue of fact or law and without any admission of liability or fault or waiver of any defense (except as to jurisdiction) as to any allegation or matter arising out of the pleadings of any party or otherwise;

WHEREAS, the United States and the Defendants agree that settlement of this case without further litigation and without the admission or adjudication of any issue of fact or law or waiver of any defense (except as to jurisdiction) is the most appropriate means of resolving this action and is in the public interest.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION

The Court has jurisdiction over the subject matter of this action and the parties pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345. The parties agree not to contest the jurisdiction of the Court to enter or enforce this Decree.

II. BACKGROUND AND SITE HISTORY

A. The Tar Creek Site is a former lead and zinc mining area covering approximately forty (40) square miles in northeast Oklahoma. The Site is referred to historically as the Picher Mining Field portion of the Tri-State Mining Area. It was extensively mined from the late 1800s through the early 1960s. The deposits of lead and zinc ore occurred in a shallow water-bearing stratum known as the Boone Formation. After cessation of mining and dewatering operations, the mines gradually filled with water as the aquifer recharged the mine spaces. After periods of heavy rainfall, acidic effluent containing lead, cadmium and zinc began to discharge from the mines to the surface in the Tar Creek drainage basin.

B. The EPA evaluated the Tar Creek Site for inclusion on the CERCLA National Priorities List ("NPL"). The Site was listed on the NPL in 1982. EPA and the State of Oklahoma, through a cooperative agreement, conducted a remedial investigation ("RI") to characterize the nature and extent of contamination at the Site. The RI was followed by a feasibility study ("FS") in which various alternative cleanup remedies were

evaluated. EPA asserts that, among other things, the RI/FS identified certain open shafts, test holes and subsidence areas as the principal source of discharges to surface waters in the Tar Creek drainage basin and, in addition, the RI/FS also identified certain wells and bore holes at the Tar Creek Site as sources of potential interconnection between the Boone Formation and the Roubidoux aquifer, a deep drinking water source beneath the Site. On June 6, 1984, the Administrator of the EPA signed a Record of Decision selecting a cleanup remedy for the Site. EPA asserts that under the ROD : (1) remedial action was to be undertaken to divert contaminated mine drainage from entering Tar Creek at certain mine water discharge points; (2) dikes and associated diversionary channels were to be constructed to divert Tar Creek around major discharge points; and (3) sixty-six (66) wells and bore holes were to be plugged to prevent possible migration of contaminated mine water to the Roubidoux aquifer. Thereafter, the EPA proceeded to implement the remedy selected in the ROD and further incurred emergency response costs in connection with the Picher municipal well.

III. PARTIES BOUND

This Decree shall apply to, be binding upon and inure to the benefit of each of the Defendants, their directors, officers, employees, agents, successors and assigns and the United States. Each signatory to this Decree represents that he or she is fully authorized to enter into the terms and conditions

of this Decree and to legally bind the party represented by him or her.

IV. PAYMENT

A. The Defendants shall pay to the Hazardous Substance Superfund the sum of One Million Two Hundred Seventy Three Thousand and no/100 Dollars ($1,273,000.00) within thirty (30) days of entry of this Decree. Such payment does not constitute a penalty, fine or monetary sanction.

B. Interest shall accrue on any amount due, owing and unpaid more than thirty (30) days after entry of this decree, at the rate provided for under 42 U.S.C. § 9607(a).

C. By March 14, 1990, Defendants will have deposited monies in the total amount of One Million Two Hundred Seventy Three Thousand and no/100 ($1,273,000.00) with an escrow agent. Defendants shall instruct the escrow agent to tender such sum to the United States in accordance with the requirements of this Decree. Defendants shall provide the United States with the escrow agent's certification of receipt of such sum.

D. The amount due under this Section, plus any accrued interest, shall be paid by certified or cashier's check made payable to "EPA-Hazardous Substance Superfund." The check shall reference the Site name and the civil action number of this case and shall be sent to:

EPA Superfund, Region VI--Tar Creek Site
P.O. Box 360582M
Pittsburgh, Pennsylvania 15251

A copy of the check and the letter enclosing the check shall be submitted to the United States as follows:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530
D.J. No. 90-11-2-330

and to EPA as follows:

Regional Counsel--Tar Creek Site
United States Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202

V. COVENANT NOT TO SUE

A. In consideration of payment in full of the amount due under the terms of this Decree, and except as specifically provided in this Section, the United States covenants not to sue or to take administrative action against Defendants for any and all civil liability to the United States for causes of action arising or costs which are incurred under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6973, in connection with the RI/FS, the ROD and the emergency response involving the Picher municipal well.

B. Notwithstanding any other provision of this Decree, the United States reserves the right to institute judicial proceedings or to issue administrative orders seeking to compel Defendants (1) to perform additional response actions at the Site or (2) to reimburse the United States for additional costs of response if,

(i) conditions at the Site, previously unknown to the United States, are discovered after the entry of this Decree, or

(ii) information is received, in whole or in part, after the entry of this Decree,

and the EPA Administrator or his delegate finds, based on these previously unknown conditions or this information together with other relevant information, that additional response action is necessary to protect human health and the environment from past or future releases at the Site.

C. The covenant not to sue set forth above does not extend to any matters other than those expressly specified in this Section V. The United States reserves, and this consent decree is without prejudice to, all rights against Defendants with respect to all other matters, including without limitation:

(1) claims based on a failure by Defendants to meet a requirement of this Decree;

(2) liability for damages for injury to, destruction of, or loss of natural resources; and

(3) criminal liability.

D. Defendants covenant not to sue the United States, its departments, officers and representatives, and agree not to assert any claims or causes of action against the Hazardous Substance Superfund, for any and all claims arising from or relating to the response activities at or related to the Site which have been resolved in this Decree.

VI. RESERVATION OF RIGHTS

A. Nothing in this Decree is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any of the Defendants for:

(a) Failure to make the payment required by Section IV of this Decree; or

(b) Any matters not expressly included in the covenant not to sue in Section V.

B. Nothing in this Decree is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not bound by this Decree.

C. The United States and the Defendants agree that neither entry of this Decree nor any action undertaken by the Defendants in accordance with this Decree constitutes an admission or acknowledgement of any factual or legal allegations in the Complaint or in this Decree or of any liability, fault, or responsibility, or evidence of such, or an admission or acknowledgement of any violation of any law, rule, regulations, or ruling by any Defendant, nor shall this Decree or performance hereunder create any rights on behalf of any person not a party to this Decree.

D. Except as expressly provided herein, the Defendants reserve all rights (including any contribution rights), defenses, claims, demands, and causes of action which each of them may have with respect to any matter, action, event, claim, or proceeding relating to the Site, or otherwise, against any person.

E. Except as provided herein, nothing in this Decree shall limit the response authority of the United States under Sections 104 and 106 of CERCLA, 42 U.S.C. §§ 9604, 9606, or any other applicable law.

VII. CONTRIBUTION PROTECTION

With regard to claims for contribution against Defendants for matters addressed in this Decree, the Parties hereto agree that the Defendants have resolved their liability with respect to such matters and are entitled, as of the effective date of this Decree, to such protection from contribution actions or claims as provided in CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

VIII. CONTINUING JURISDICTION

The Court specifically retains jurisdiction over both the subject matter of and the parties to this action for the duration of this Decree for the purpose of issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify at the request of the parties, enforce, terminate, or reinstate, at the agreement of the parties, the terms of this Decree.

IX. SATISFACTION AND TERMINATION

The provisions of this Decree shall be deemed satisfied upon EPA's receipt of full payment of amount due pursuant to Section IV of this Decree. The Decree shall be terminated by motion of any party and order of the Court; provided however, that termination shall not affect any continuing obligations established hereunder which shall remain in effect, including without limitation, those provided under Section V (Covenant Not To Sue), VI (Reservation of Rights) and VII (Contribution Protection).

X. PUBLIC COMMENT

This Decree shall be subject to a thirty (30) day public comment period. The United States may withdraw its consent to this Decree if comments received disclose facts or considerations which indicate that this Decree is inappropriate, improper or inadequate.

XI MODIFICATION

No alterations or modifications of this Decree shall be made without the prior written approval of the United States and each Defendant or its representative and order of the Court.

XII. EFFECTIVE DATE

Subject to the public comment provisions of this Decree, the effective date of this Decree shall be the date of entry by this Court.

SIGNED this 10th day of June, 1990.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES:

DATED: 4/17/91

RICHARD B. STEWART (ACTING)
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

DATED: _____

ROBERT E. LAYTON JR., P.E.
Regional Administrator
U. S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

U.S. v. Asarco, et al

FOR THE UNITED STATES:

DATED: _____

RICHARD B. STEWART
Assistant Attorney General
Environment and Natural
Resources Division
U.S. Department of Justice
Washington, D.C. 20530

DATED: _____

ROBERT E. LAYTON JR., P.E.
Regional Administrator
U.S. Environmental Protection
Agency
1445 Ross Avenue
Dallas, Texas 752020-2733

PAMELA PHILLIPS
Associate Regional Counsel
U.S. Environmental Protection
Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

FOR THE DEFENDANTS:

FOR THE DEFENDANTS:

ASARCO, INC.

T. C. Osborne

By: _____

Its: EXEC. VICE PRESIDENT.

BLUE TEE CORPORATION

By: Edward S. Goldstein

Its: Special Counsel

CHILDRESS ROYALTY COMPANY

By: G.V. Childress

Its: Vice-President

GOLD FIELDS MINING CORPORATION

By: _____

Its: Special Counsel

NL INDUSTRIES, INC.

By: Janet D Smith

Its: Associate General Counsel

ST. JOE MINERALS CORP.

By: _____

Its: Vice President

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HOMER Z. and MARGARET E. GOATCHER, husband and wife,	)	
Plaintiffs,	)	
vs.	)	No. 88-C-199 E
UNITED STATES OF AMERICA,	)	
Defendant.	)	

FINAL JUDGMENT

In accordance with this Court's opinion set forth in its Order filed on March 11, 1991, granting the United States of America's Motion for Summary Judgment, it is hereby

ORDERED AND ADJUDGED that the Plaintiffs take nothing by virtue of their Complaint, that this action be dismissed on the merits.

Signed this 7th day of June, 1991.

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM ONLY:

Louise P. Hytken, Attorney
for United States of America

Charles D. Harrison,
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. ORVLE L. GRAHAM a/k/a LEON O. GRAHAM; VIVIAN J.GRAHAM; O'BRIEN ROCK COMPANY, INC.; COUNTY TREASURER, Delaware County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Delaware County, Oklahoma, Defendants.	)	FILED JUN 10 1991 Jack C. Silver, Clerk U.S. DISTRICT COURT CIVIL ACTION NO. 90-C-847-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 10th day of June, 1991. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney; the Defendant, O'Brien Rock Company, Inc., appears by its attorney, Coy D. Morrow; the Defendants, County Treasurer, Delaware County, Oklahoma, and Board of County Commissioners, Delaware County, Oklahoma, appear by Wesley E. Combs, Assistant District Attorney, Delaware County, Oklahoma; and the Defendants, Orvle L. Graham a/k/a Leon O. Graham and Vivian J. Graham, appear not, but make default.

The Court, being fully advised and having examined the court file, finds that the Defendant, Orvle L. Graham a/k/a Leon O. Graham, acknowledged receipt of Summons and Amended Complaint on October 12, 1990; that the Defendant, Vivian J. Graham, acknowledged receipt of Summons and Amended Complaint on

October 12, 1990; that the Defendant, O'Brien Rock Company, Inc., acknowledged receipt of Summons and Amended Complaint on October 16, 1990; that Defendant, County Treasurer, Delaware County, Oklahoma, acknowledged receipt of Summons and Amended Complaint on October 4, 1990; and that Defendant, Board of County Commissioners, Delaware County, Oklahoma, acknowledged receipt of Summons and Amended Complaint on October 8, 1990.

It appears that the Defendants, County Treasurer, Delaware County, Oklahoma, and Board of County Commissioners, Delaware County, Oklahoma, filed their Answer on October 11, 1990; that the Defendant, O'Brien Rock Company, Inc. filed its Answer and Disclaimer on October 17, 1990; and that the Defendants, Orvle L. Graham a/k/a Leon O. Graham and Vivian J. Graham, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on September 30, 1985, Orvle L. Graham a/k/a Leon O. Graham and Vivian J. Graham d/b/a Graham Lime Company, filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 85-01622, were discharged on February 6, 1986, and the bankruptcy case was closed on April 25, 1988.

The Court further finds that this is a suit based upon certain promissory notes and for foreclosure of certain mortgages securing said promissory notes upon the following described real properties located in Delaware County, Oklahoma, within the Northern Judicial District of Oklahoma:

A) A tract or parcel of land located in Government Lot 3 of Section 11, Township 22 North, Range 25 East, in Delaware County, Oklahoma, more particularly described in detail as follows, to-wit:

Beginning at a point 332.2 feet South and 147.2 feet East of the NW corner of the said Government Lot 3, thence South 138.0 feet, thence East 10 feet, thence South 04° 30' East 25 feet, thence East 145 feet to a point in the West R/W boundary of Arkansas State Highway No. 43, thence North 07° 08' West 164.5 feet along the said Highway R/W boundary, thence West 136.7 feet to the point of beginning, containing 0.55 acre, more or less.

Encumbrances, reservations, exceptions and defects:

Subject to, however, all valid outstanding easements, right-of-ways, mineral leases, mineral reservations, and mineral conveyances of record.

AND

B) A tract or parcel of land located in Government Lot 3 and the NE1/4 NE1/4 SW1/4 of Section 11, Township 22 North, Range 25 East, in Delaware County, Oklahoma, more particularly described in detail as follows, to-wit:

Beginning at a point 17 feet South and 37.6 feet West of the NW corner of said Lot 3, thence South 0° 58' West 441 feet, thence East 131 feet, thence South 64° 15' East 67.7 feet, thence North 138.0 feet, thence East 136.7 feet, to a point on the West R/W boundary of Arkansas State Highway No. 43, thence North 07° 08' West 333.0 feet along the said Highway R/W boundary, thence North 89° 43' West 280.3 feet to the point of beginning, containing 3.1 acres, more or less; AND the North 17 feet of Lot 3, and the North 17 feet of the East 37.6 feet of the NE1/4 NE1/4 SW1/4 of Section 11, Township 22 North, Range 25 East.

Encumbrances, reservations, exceptions, and defects:

Subject to, however, all valid outstanding easements, right-of-ways, mineral leases, mineral reservations, and mineral conveyances of record.

The Court further finds that, the Defendants, Orvle L. Graham and Vivian J. Graham, executed and delivered to the United States of America, acting through the Farmers Home Administration, the following promissory notes:

DATE	AMOUNT
04-27-77	$18,500.00
06-05-79	51,700.00
03-15-85	56,196.53
10-28-81	21,390.00
12-16-83	26,324.68
03-15-85	29,669.80
09-06-79	10,800.00
03-15-85	7,477.81
10-28-81	21,390.00
12-16-83	26,324.68
03-15-85	29,669.80

The Court further finds that as security for the payment of the above-described notes, the Defendants, Orvle L. Graham and Vivian J. Graham, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated April 27, 1977, covering the above-described property (A). Said mortgage was recorded on April 27, 1977, in Book 356, Page 101, in the records of Delaware County, Oklahoma.

The Court further finds that as security for the payment of the above-described notes, the Defendants, Orvle L. Graham adn Vivian J. Graham, executed and delivered to the United States of America, acting through the Farmers Home

Administration, a mortgage dated June 5, 1979, covering the above-described property (B). Said mortgage was recorded on June 5, 1979, in Book 388, Page 875, in the records of Delaware County, Oklahoma.

The Court further finds that the Defendants, Orvle L. Graham a/k/a Leon O. Graham and Vivian J. Graham, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Orvle L. Graham a/k/a Leon O. Graham and Vivian J. Graham, are indebted to the Plaintiff in the principal sum of $111,303.07, plus accrued interest in the amount of $33,240.58 as of September 21, 1989, plus interest accruing thereafter at the rate of $24.2735 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of $30.00 ($20.00 docket fees, $10.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Delaware County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of $145.66, plus penalties and interest, for the year of 1990. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, O'Brien Rock Company, Inc. disclaims all right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendants, Orvle L. Graham a/k/a Leon O. Graham and Vivian J. Graham, in the principal sum of $111,303.07, plus accrued interest in the amount of $33,240.58 as of September 21, 1989, plus interest accruing thereafter at the rate of $24.2735 per day until judgment, plus interest thereafter at the current legal rate of 6.09 percent per annum until paid, plus the costs of this action in the amount of $30.00 ($20.00 docket fees, $10.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Delaware County, Oklahoma, have and recover judgment in the amount of $145.66, plus penalties and interest, for ad valorem taxes for the year 1990, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, O'Brien Rock Company, Inc., has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the County Treasurer and Board of County Commissioners, Delaware County, Oklahoma, for 1990 ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

PHIL PINNELL, OBA #7169
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

WESLEY E. COMBS, OBA #13026
District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Delaware County, Oklahoma

Judgment of Foreclosure
Civil Action No. 90-C-847-B

PP/esr

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

TULSA DIVISION

LYNN MARTIN, Secretary of Labor, United States Department of Labor,	)	
Plaintiff,	)	Civil Action
v.	)	No. 90-C-577-B
UNITED METRO MARKETING SURVEYS INC., and CLUB PARADISE, INC. Corporations, and MARGIE MICHAELS, and PAUL MCBRIDE, Individuals,	)	
Defendants,	)	

CONSENT JUDGMENT

Plaintiff has filed her complaint and defendants have agreed to the entry of judgment without contest. It is, therefore, upon motion of the plaintiff and for cause shown,

ORDERED, ADJUDGED and DECREED that defendants, United Metro Marketing Surveys, Inc., and Margie Michaels, their officers, agents, servants, employees and all persons in active concert or participation with them be and they hereby are permanently enjoined and restrained from violating the provisions of sections 6, 7, 11(c), 12(c), 15(a)(2), 15(a)(4) and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq., hereinafter referred to as the Act, in any of the following manners:

1. Defendants United Metro Marketing Surveys, Inc., and Marige Michaels shall not, contrary to Sections 6 and 15(a)(2) of the Act, 29 U.S.C. §§ 206 and 215(a)(2), pay any employee who

is engaged in commerce or in the production of goods for commerce, or who is employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, wages at a rate less the minimum hourly rates required by Section 6 of the Act.

2. Defendants United Metro Marketing Surveys, Inc. and Margie Michaels shall not, contrary to Sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215(a)(2) employ any employee in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, for workweeks longer than forty (40) hours, unless the employee receives compensation for his employment in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which he is employed.

3. Defendants United Metor Marketing Surveys, Inc. and Margie Michaels shall not, contrary to Sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and 215(a)(5), fail to make, keep and preserve adequate and accurate records of the persons employed by defendants, and the wages, hours and other conditions and practices of employment maintained by them as prescribed by regulations issued by the Administrator of the Employment Standards Administration, United States Department of Labor (29 C.F.R. Part 516).

4. Defendants United Metro Marketing Surveys, Inc. and Margie Michaels shall not, contrary to Sections 12(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 212(c) and 215(a)(4), employ any oppressive child labor, as such term is defined in Section

3(1) of the Act, 29 U.S.C. § 203(1), in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the Act.

Based on defendants' averments of inability to pay, it is on motion of the Secretary, ORDERED, that this action be and the same hereby is, dismissed without prejudice as to the Secretary's prayer for restitutionary injunctive relief.

It is further ORDERED that the right of any and all of the employees of defendant's Metro Marketing Surveys, Inc., and Margie Michaels to bring an action under Section 16(b) of the Fair Labor Standards Act 29 U.S.C. § 216(b), shall be restored and that neither the filing of this action nor the entry of this judgment shall be a bar to such action and that the statute of limitations in such action shall be deemed tolled during the pendency of this action.

It is further ORDERED, that each of the parties shall bear his or her own costs.

Dated this 10th day of June, 1991.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Defendants consent to the entry of this judgment:

David A. Carpenter
DAVID A. CARPENTER
Attorney for Defendants
United Metro Marketing Surveys and Marige Michaels

Plaintiff moves for entry of this judgment:

ROBERT P. DAVIS
Solicitor of Labor

JAMES E. WHITE
Regional Solicitor

BOBBIE J. GANNAWAY
Counsel for Employment Standards

By: Michael H. Olvera
MICHAEL H. OLVERA
Trial Attorney

Attorneys for Plaintiff.

RSOL Case No. 89-00707

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity,	)	
Plaintiff,	)	
vs.	)	Case No. 90-C-548-B
SAM C. GILMORE, BEVERLY GILMORE,	)	
Defendants.	)	

ORDER

COMES NOW for consideration the Motion of the Plaintiff, Federal Deposit Insurance Corporation, for dismissal with prejudice, and for good cause shown, the Court FINDS AND ORDERS that all of the claims asserted by the FDIC herein against the Defendants, Sam C. Gilmore and Beverly Gilmore, are hereby dismissed with prejudice, with each party to bear their own costs and attorney's fees.

DATED this 10th day of June, 1991.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

JWR/05-91398A/al

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for FIRST NATIONAL BANK & TRUST COMPANY, CUSHING, OKLAHOMA,

Plaintiff,

vs.

ASBESTOS DISPOSAL SERVICES, INC., an Oklahoma corporation; REX RUDY, a/k/a REX R. RUDY, an individual; REX RUDY, d/b/a ASBESTOS DISPOSAL SERVICE; BONNIE RUDY, a/k/a BONNIE L. RUDY, an individual; AMERICAN FLORAL SERVICES, INC.; UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE DIVISION; and STATE OF OKLAHOMA, OKLAHOMA TAX COMMISSION;

Defendants.

FILED

JUN 10 1991

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 90-C0039-B

AGREED JOURNAL ENTRY OF FINAL JUDGMENT,
DECREE OF FORECLOSURE AND ORDER OF SALE

Plaintiff, the Federal Deposit Insurance Corporation, as Receiver for First National Bank and Trust Company, Cushing, Oklahoma (the "FDIC"), as well as Mountain States Financial Resources, Corp. ("Mountain States"); and Defendants, Asbestos Disposal Services, Inc. ("ADS"), Rex Rudy, a/k/a Rex R. Rudy; Red Rudy, d/b/a Asbestos Disposal Service; Bonnie Rudy, a/k/a Bonnie L. Rudy; American Floral Services, Inc. ("American Floral"); United States of America, Department of the Treasury, Internal Revenue Division (the "IRS"); and State of Oklahoma, Oklahoma Tax Commission, constituting all parties remaining interested in the subject matter of this action, hereby mutually stipulate and agree to the entry of a Final

Judgment, Decree of Foreclosure and Order of Sale with respect to the remaining Causes of Action set forth in the FDIC's March 23, 1990 Amended Complaint[1] and the February 9, 1990 Crossclaim of American Floral Services, Inc., as follows.

I. PLAINTIFF'S FIRST CAUSE OF ACTION: NOTE 8102.

The undersigned parties agree, and IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Mountain States should be granted judgment against Defendant ADS, on the First Cause of Action with respect to Promissory Note 8102 for the principal sum of Twenty-Eight Thousand Three Hundred Eleven and 47/100's Dollars ($28,311.47), accrued interest up through and including March 15, 1991, in the amount of $13,267.97, additional interest from March 16, 1991 up through and including the date of judgment herein at a rate of $10.86 per diem, and that additional interest be awarded from the date of judgment until fully paid, as provided by 28 U.S.C. Section 1961.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Mountain States should have and recover an *in personam* judgment against ADS for its costs and a reasonable attorney's fee, to be determined by this Court following notice and a hearing, as provided by Federal Rule 54(d), 12 O.S. Sections 928 and 936 and the terms of Note 8102.

II. PLAINTIFF'S SECOND CAUSE OF ACTION: NOTE 8103

The undersigned parties agree, and IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Mountain States should be granted judgment against Defendant ADS on the Second Cause of Action with respect to Promissory Note 8103 in the principal sum of Twelve Thousand Six Hundred Seventeen and 75/100's Dollars ($12,617.75), accrued interest up through and including March 15, 1991 in the amount of $4,848.86, additional interest

[1]This Amended Complaint incorporates by reference all terms of the FDIC's original Complaint filed in this action on January 22, 1990.

from March 16, 1991 until the date of judgment herein at the rate of $4.67 per diem, and that additional interest be awarded from the date of judgment until fully paid as provided by 28 U.S.C. Section 1961.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Mountain States should have and recover an *in personam* judgment against ADS for its costs, and a reasonable attorney's fee to be determined by this Court following notice and a hearing as provided by Federal Rule 54(d), 12 O.S. Sections 928 and 936 and the terms of Note 8103.

III. PLAINTIFF'S THIRD CAUSE OF ACTION: NOTE 27072

The undersigned parties agree, and IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the FDIC should have and recover a final money judgment against Defendant Rex Rudy, d/b/a Asbestos Disposal Service, a/k/a Rex R. Rudy ("Rudy" herein) on the Third Cause of Action with respect to Promissory Note 27072, in the principal sum of $14,960.04, together with interest accrued through and including March 1, 1991 in the amount of $1,972.68, plus additional interest accrued and accruing from March 2, 1991 until the date of judgment herein at the rate of $5.53 per diem, and that additional interest be awarded from the date of judgment until fully paid as provided for by 28 U.S.C. Section 1961.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the FDIC should have and recover *in personam* judgment against Rudy for FDIC's costs and a reasonable attorney's fee to be determined by this Court following notice and a hearing, as provided for by Federal Rule 54(d), 12 O.S. Sections 928 and 936 and the terms of Note 27072.

IV. PLAINTIFF'S FOURTH CAUSE OF ACTION: REPLEVIN OF RUDY'S 1987 FORD.

The Fourth Cause of Action was dismissed without prejudice by Joint Stipulation filed herein on February 14, 1990. No request for judgment is made on the Fourth Cause of Action.

V. PLAINTIFF'S FIFTH CAUSE OF ACTION: THE GUARANTY OF REX RUDY

The undersigned parties agree, and IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Mountain States should be granted judgment against Rudy on the Fifth Cause of Actin with respect to a Guaranty Agreement executed by Rudy dated November 12, 1987 in favor of the First National Bank & Trust Company, Cushing, Oklahoma ("First National") for the relief more particularly described in the First and Second Causes of Action of the January 22, 1990 Complaint filed in the captioned action and as set forth with particularity hereinabove in Paragraphs I and II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Mountain States should have and recover an *in personam* judgment against Rudy for its costs and a reasonable attorney's fee to be determined by this Court following notice and a hearing as provided for by Federal Rule 54(d), 12 O.S., Sections 928 and 936.

VI. PLAINTIFF'S SIXTH CAUSE OF ACTION: THE GUARANTY OF REX RUDY

On May 31, 1990 the Sixth Cause of Action was dismissed without prejudice. No request for Judgment is made on the Sixth Cause of Action.

VII. PLAINTIFF'S SEVENTH CAUSE OF ACTION: THE SECURITY AGREEMENT FROM ADS.

The undersigned parties agree, and IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Mountain States should be granted judgment against ADS foreclosing its security interest created by Security Agreement executed on or about November 12, 1987 by ADS to First National Bank and Trust Company, Cushing, Oklahoma ("First National") in the following described collateral (the "Collateral"):

A. All inventory of ADS then owned or thereafter acquired, and all additions, accessions and substitutions thereto and therefore, and all accessories, parts and equipment now or thereafter attached thereto or used in connection therewith;

B. All accounts of ADS, including contract rights, then existing or thereafter arising;

C. All general intangibles of ADS then existing or thereafter arising;

D. All instruments, documents of title, policies and certificates of insurance, securities, chattel paper, deposits, cash or other property owned by ADS or in which ADS has an interest which were then or may thereinafter be in possession of First National, FDIC, or Mountain States;

E. All proceeds and products of the foregoing; and

F. All inventory, accounts, general intangibles, chattel paper, securities and instruments acquired with the proceeds of the foregoing and products of the foregoing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the above-described Collateral be sold pursuant to 12A O.S., Sections 9-501, *et seq.*, of Oklahoma's Uniform Commercial Code, and the proceeds arising therefrom be applied in satisfaction of the judgments granted on the First, Second, and Third Causes of Action as set out in the January 22, 1990 Complaint and as awarded herein, and that the surplus, if any, be paid into Court to abide further Order of this Court; that upon completion of the sale of the Collateral, that a judgment against ADS be entered in Mountain States' favor in the event of any deficiency.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Mountain States should have and recover a final judgment, *in rem*, against ADS for its costs and a reasonable attorney's fee to be determined by this Court following notice and a hearing as provided for by Federal Rule 54(d), 12 O.S. Sections 928 and 936 and the terms of the Security Agreement.

VIII. PLAINTIFF'S EIGHTH CAUSE OF ACTION: NOTE 58806.

The undersigned parties agree, and IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the FDIC should have and recover a final money judgment against Rex Rudy and Bonnie Rudy, jointly and severally, for the principal sum of Twenty-Five Thousand

Three Hundred Forty-Two and 11/100's Dollars ($25,342.11), together with interest accrued through and including March 1, 1991 in the amount of $6,561.27, additional interest accrued and accruing from March 2, 1991 until the date of judgment herein at the rate of $9.02 per diem, and that additional interest be awarded from the date of judgment until fully paid as provided for by 28 U.S.C. Section 1961.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that FDIC should have and recover an *in personam* judgment against Rex Rudy and Bonnie Rudy, jointly and severally, for its costs and reasonable attorney's fees as provided for by Federal Rule 54(b), 12 O.S. Sections 928 and 936 and the terms of Note 58806 which allow for an attorney's fee of a **minimum** of fifteen percent (15%) of all sums due and owing upon default. The amount of these costs and the FDIC's reasonable attorney's fees are to be established by this Court after notice and a hearing.

IX. PLAINTIFF'S NINTH CAUSE OF ACTION: THE REAL ESTATE MORTGAGE

The undersigned parties agree, and IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the FDIC should have and recover a final judgment, *in rem*, on its Ninth Cause of Action seeking foreclosure of the mortgage it holds as follows:

1) Pursuant to that certain Real Estate Mortgage (the "February 9 Mortgage") executed and delivered by Rex R. Rudy and Bonnie L. Rudy, husband and wife, to First National as recorded in the records of Tulsa County, State of Oklahoma on February 10, 1987 in Book 5001 at Page 319, FDIC has a valid lien on the following described real property:

> Lot Three (3), Block Sixteen (16), MICHAEL HEIGHTS EXTENDED ADDITION to the City of Tulsa, State of Oklahoma, commonly known as 7826 East 22nd Street;

together with all buildings and improvements thereon and appurtenances, hereditaments and all other rights thereunto belonging (the "Mortgage Property").

2) Said February 9 Mortgage is hereby foreclosed and declared a prior and superior lien upon the Mortgage Property, and all right, title, interest and

estate of each Defendant in and to the Mortgaged Property is adjudged subject, junior and inferior to the February 9 Mortgage, lien and judgment of FDIC. Said real property shall be levied upon and sold as required in the order of sale, *infra*.

X. CROSSCLAIM OF AMERICAN FLORAL, FIRST CAUSE OF ACTION

The undersigned parties agree, and IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that American Floral should be granted judgment on its First Cause of Action against the Defendants Rex R. Rudy and Bonnie L. Rudy on its Crossclaim, on its Promissory Installment Note for the principal sum of $21,209.93, plus interest from January 14, 1988, accruing at the rate of ten percent (10%) per annum, up through and including the date of judgment and that additional interest be awarded from the date of judgment until fully paid, as provided by 28 U.S.C. Section 1961.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that American Floral should have and recover an *in personam* judgment against Rex Rudy and Bonnie Rudy, jointly and severally, for its costs and reasonable attorney's fees as provided for by Federal Rule 54(b), 12 O.S. Sections 928 and 936 and the terms of said note dated January 14, 1987, which allows for an attorney's fee of at least $25.00 and fifteen percent (15%) of the unpaid principal and interest due and owing upon default. The amount of these costs and the reasonable attorney's fees of American Floral are to be established by this Court after notice and hearing.

XI. CROSSCLAIM OF AMERICAN FLORAL, SECOND CAUSE OF ACTION

The undersigned parties agree, and IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that American Floral should have and recover a final judgment, *in rem*, on its Second Cause of Action seeking foreclosure of the mortgage it holds as follows:

(1) Pursuant to that certain Real Estate Mortgage (the "January 14 Mortgage") executed and delivered by Rex R. Rudy and Bonnie L. Rudy, husband and wife, to

American Floral Services, Inc., as recorded in the records of Tulsa County, State of Oklahoma, on February 11, 1987, in Book 5001 at Page 1243, American Floral has a valid lien on the following described real property:

> Lot Three (3), Block Sixteen (16), MICHAEL HEIGHTS EXTENDED ADDITION to the City of Tulsa, State of Oklahoma, commonly known as 7826 East 22nd Street;

together with all buildings and improvements thereon and appurtenances, hereditaments and all other rights thereunto belonging (the "Mortgage Property").

(2) Said January 14 Mortgage is hereby foreclosed and it is declared to be a mortgage line which is junior and inferior to the mortgage lien of FDIC under their February 9 Mortgage, but said January 14 Mortgage is declared a prior and superior lien upon the Mortgage Property, except as to FDIC, and all right, title, interest and estate of each Defendant, except FDIC, in and to the Mortgaged Property is adjudged subject, junior and inferior to the January 14 Mortgage lien, and judgment of American Floral. Said real property shall be levied upon and sold as required in the Order of Sale, *infra*.

XII. ORDER OF SALE

The Court has determined that as to the Mortgage Property and as between all parties herein, FDIC has a mortgage lien which is prior and superior to all other parties and American Floral has a mortgage lien which is junior and inferior to the mortgage lien of FDIC and prior and superior to all other parties herein. IT IS ORDERED that the United States Marshal is ordered to levy upon, advertise and sell the Mortgaged Property **with appraisement**, subject only to the interest possessed by the Federal National Mortgage Association based upon that certain mortgage filed of record in the office of the Tulsa County Clerk, Tulsa, Oklahoma, on June 3, 1975 and recorded in Book 4167 at Page 1752, but free and clear of the interests of all Defendants, and to apply the proceeds of such sale as follows:

First, toward satisfaction of the lawful costs of such sale;

Second, toward satisfaction of the FDIC's judgments as set forth herein above; and

Third, the surplus, if any, shall then be paid into this Court for application to the judgment of American Floral as ordered by this Court and to abide further Order without

prejudice to the rights of any party hereto presenting any claim they may possess to any such surplus funds; and

Upon confirmation of such sale by this Court, all Defendants in this action and all those claiming by or through them, shall be forever barred from asserting any further right, title or interest in the Mortgaged Property, with the exception of the IRS which may choose to exercise its statutory right of redemption as provided in 28 U.S.C. Section 2410(c).

IT IS SO ORDERED this 10th day of June. 1991.

FOR ALL OF WHICH LET EXECUTION LIE.

S/ THOMAS R. BRETT

THOMAS R. BRETT, Judge
United States District Court
Northern District of Oklahoma

APPROVED:

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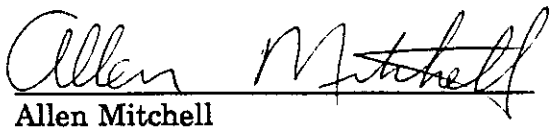
ATTORNEYS FOR PLAINTIFF, FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for Fist National Bank & Trust Company, Cushing, Oklahoma

APPROVED:



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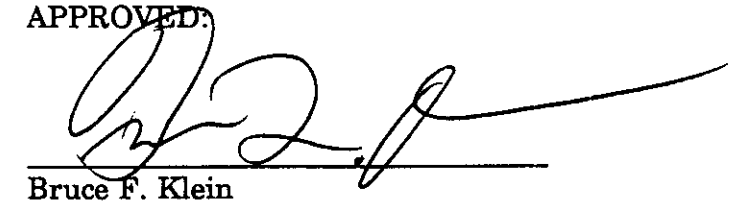
ATTORNEY FOR DEFENDANTS ASBESTOS DISPOSAL SERVICES, INC., REX RUDY d/b/a ASBESTOS DISPOSAL SERVICE, and BONNIE RUDY

APPROVED:



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FINANCIAL RESOURCES CORPORATION

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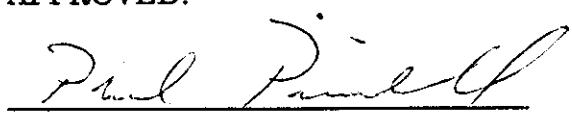

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ATTORNEY FOR DEFENDANT UNITED STATES OF AMERICA

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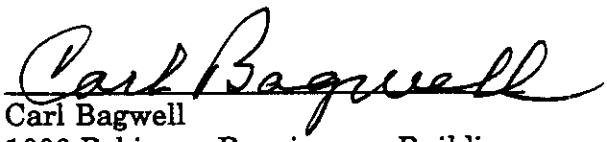

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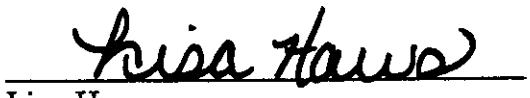
FLORAL SERVICES, INC.

APPROVED:



Lisa Haws
Assistant General Counsel
2501 Lincoln Boulevard
Oklahoma City, OK 73194-0111

ATTORNEY FOR DEFENDANT STATE OF OKLAHOMA ex rel. OKLAHOMA TAX COMMISSION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:	
REPUBLIC TRUST & SAVINGS COMPANY d/b/a Western Trust and Savings Company,	Case No. 84-01460-W (Chapter 11)
R. DOBIE LANGENKAMP, Successor Trustee,	District Court No. 91-C-244-E
Plaintiff,	
vs.	Adversary No. 86-0347-C
MACK BAUGHN and BARBARA BAUGHN,	
Defendants.	

O R D E R

Before the Court is Defendants' Motion for Withdrawal of Reference pursuant to 28 U.S.C. §157(d).

An adversary proceeding was commenced against Defendants on August 12, 1986. Defendants filed an answer to the complaint on September 12, 1986 that included a demand for jury trial. Presently Defendant seeks a withdrawal of reference from the Bankruptcy Court asserting that they are entitled to a jury trial under Granfinanciera, S.A. v. Norberg, _____ U.S. _____, 109 S.Ct. 2782 (1989).

In In re Latimer, 918 F.2d 136 (10th Cir. 1990) the Tenth Circuit stated:

> [T]o avoid waiver, parties seeking a jury trial must combine their request for a jury trial with a request for transfer to the district court.

Id. at 137. Since Defendants filed the Motion to Withdraw four and one-half years after the demand for jury trial was made, Defendants' motion is hereby denied.

So ORDERED this 7th day of June, 1991.

JAMES O ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:	
DANNY L. STEFANOFF,	Case No. 88-00700-C (Chapter 7)
Debtor.	
DANNY L. STEFANOFF,	Adv. No. 88-0193-C
Appellant,	
v.	
FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, AS RECEIVER FOR VICTOR SAVINGS AND LOAN ASSOCIATION,	District Court No. 90-C-227-E
Appellee.	

ORDER

This order pertains to the appeal of Danny L. Stefanoff ("Stefanoff") of the Order of the United States Bankruptcy Court for the Northern District of Oklahoma dated March 8, 1990, which found that the debt owed by Stefanoff to Federal Savings and Loan Insurance Corporation ("FSLIC"), as receiver for Victor Savings and Loan Association ("Victor Savings"), was nondischargeable under 11 U.S.C. § 523(a)(2)(A) and § 523(a)(6).

The Memorandum of Interlocutory Opinion and Order

On October 3, 1989 Judge Stephen S. Covey entered his memorandum of Interlocutory Opinion and Order. For clarity's sake, that memorandum is substantially paraphrased in the pages that follow:

Stefanoff's complaint raised objections to the discharge of debts arising out of three transactions - the Burgundy Place, Town & Country Bank, and Sallisaw RV Park

transactions, respectively. Prior to trial, the allegations relating to the Burgundy Place transaction were dismissed. At trial, the bankruptcy court granted FSLIC's motion for directed verdict as to the dischargeability of the debt arising out of the Town & Country transaction and ruled that Stefanoff had failed to establish the dischargeability of the debt arising out of the Sallisaw RV Park transaction.

The bankruptcy court concluded on October 3, 1984, that the evidence showed that Stefanoff and Bill Walsh ("Walsh") agreed to form a partnership in 1986 called the Sallisaw R.V. Limited Partnership to purchase real estate in the vicinity of the Blue Ribbon Downs Racetrack in Sallisaw, Oklahoma and construct there a recreational vehicle park ("Sallisaw RV Park"). Walsh and Stefanoff intended to finance the acquisition and development of Sallisaw RV Park through a loan from Victor Savings. At this time, Walsh had just resigned as an officer and member of the Board of Directors of Victor Savings. Stefanoff was an advisory member of the Victor Savings Board and Victor Savings' Executive Committee and had previously borrowed from Victor Savings between $12 and $14 million for other projects in which he was involved. Victor Savings' Executive Committee was responsible for approving approximately 75% of the loans made during this period and was primarily involved in disposing of real estate projects which Victor Savings had foreclosed upon or otherwise repossessed ("REO's").

Walsh originated the idea and developed the plan and budget related to the construction of Sallisaw RV Park. Stefanoff's role was to aid in securing the financing for the project through Victor Savings and one of his businesses was to serve as the contractor to construct the improvements at Sallisaw RV Park.

Stefanoff informed Walsh that he could arrange $2.5 million in financing from Victor Savings for the Sallisaw RV Park project. Based on Walsh's cost projections and income pro formas, $1.4 million would be loaned for construction and the remaining $1.1 million would be used to purchase the real estate. The bankruptcy court found that both Stefanoff and Walsh anticipated that they could purchase the real estate for much less than $1.1 million, but they planned to arrange a straw man or turnaround sale to make it appear that the purchase price was approximately $1.1 million and split the excess loan proceeds.

The bankruptcy court concluded that Stefanoff and Walsh agreed that, as a condition to obtaining the Sallisaw RV Park financing, Walsh individually would assume the ownership and liability for a Victor Savings' REO in Commerce, Texas, consisting of an apartment complex, and also pay approximately $300,000.00 in interest on other defaulted loans. Walsh agreed to this condition believing that he could use his share of the excess loan proceeds on the Sallisaw RV Park project to fulfill these obligations until he was able to make the REO's profitable.

The bankruptcy court found that with this plan in mind, in early June of 1986, Walsh contacted William Boyd ("Boyd"), who was doing business as Executive Realty, and hired him to locate and purchase as a straw man 90 to 100 acres of suitable real estate for the Sallisaw RV Park. Walsh agreed to pay Boyd a fee of $100,000.00. Boyd in turn contacted J.J. Hight ("Hight"), who was doing business as Valley Land Title Company, and hired him to locate the property and agreed to pay him $25,000.00. Hight located suitable real estate consisting of two tracts of land, one owned by the Pennys and one by the Bagleys. On June 23, 1986, Boyd entered into contracts to purchase the real estate with

the Pennys and Bagleys for a total price of $270,000.00.

Sometime prior to June of 1986, Stefanoff arranged for approval of the Sallisaw RV Park loan. In June, when Walsh first met with one of Victor Savings' loan officers, Jim Eaton, the loan had already been informally approved although no loan application had been made and Victor Savings had no written information concerning the project. At this meeting, Walsh delivered to Jim Eaton his cost projections and income pro formas, a copy of the uncompleted Sallisaw RV Park certificate of limited partnership, and a copy of a real estate sales contract between Boyd and Sallisaw RV Limited Partnership. The real estate sales contract indicated that the purchase price of the Sallisaw RV Park property was $1.116 million.

Following this meeting, on June 30, 1986, Walsh received a letter from Victor Savings confirming approval of the $2.5 million loan. Prior to finally approving the loan, Victor Saving hired Mr. Stansifer, an M.A.I. certified appraiser, to value the Sallisaw RV Park property. At the time the loan was finally approved, the written appraisal report had not been completed, but Victor Savings was aware of Mr. Stansifer's valuation dated July 15, 1986 valuing the real estate at $1.1 million and the proposed improvements at $2.224 million, a total of $3.324 million for the completed project.

The evidence presented to the bankruptcy court showed that on July 17, 1986, the Sallisaw R.V. Limited Partnership filed its certificate of limited partnership with the Oklahoma Secretary of State, listing Walsh as general partner and a limited partner and Stefanoff as a limited partner. On July 23, 1986, the $2.5 million loan from Victor Savings to Sallisaw R.V. Limited Partnership was closed in Hight's offices in Sallisaw, Oklahoma.

Walsh, as general partner, executed a Construction Loan Agreement, Construction Mortgage and Security Agreement, and a Promissory Note in the amount of $2.5 million. Walsh obtained a check in the amount of $1.116 million from Victor Savings payable to Victor Savings and endorsed to Valley Land Title Company, closing agent for the purchase of the Sallisaw RV Park property. In connection with the loan closing, Victor Savings either prepared a settlement statement or obtained a settlement statement prepared by Walsh on HUD Standard Form 1A, which indicated that $1.116 million of the $2.5 million loan was made to pay the Pennys and Bagleys a contract sales price of $1.116 million to purchase the Sallisaw RV Park property.

The evidence presented also showed that on July 23, 1986, the purchase of the Sallisaw RV Park property by Boyd from the Pennys and Bagleys and then the purchase by Sallisaw R.V. Park Limited Partnership from Boyd were closed simultaneously in Hight's offices in Sallisaw, Oklahoma. The Pennys, the Bagleys, Boyd, Hight, and Walsh all attended the closing. The Pennys received $120,000.00, less closing costs, and tendered a warranty deed for their 80.16 acres to Boyd. The Bagleys received $150,000.00, less closing costs, and tendered a warranty deed for their 13.29 acres to Boyd. Hight received a consulting fee of $23,500.00 and Willie B. Hale/Pat Coleman received a consulting fee of $10,000.00. Boyd, through Executive Realty, received $812,005.02 and tendered a warranty deed for the Sallisaw RV Park property to the Sallisaw R.V. Park Limited Partnership. Boyd, Walsh, the Pennys and Bagleys signed the settlement statement on HUD Standard Form 1A indicating that $1.116 million of the $2.5 million loan from Victor Savings was used to pay the Pennys and Bagleys for the purchase of the Sallisaw RV Park

property.

The bankruptcy court found that after the closing, Boyd disbursed the $812,005.02 as follows: Executive Realty retained its agreed fee of $100,000.00; $8,752.00 was paid to Walsh as reimbursement for expenses incurred in the real estate transaction; and, of the remaining $703,253.02, Walsh received $351,626.51 and Stefanoff received $351,626.51. The HUD Standard Form 1A settlement statement was returned to Victor Savings, but the other settlement statements prepared at the closing were retained by Hight. Victor Savings had Walsh complete a loan application following the actual closing of the loan.

In the fall of 1987, the Federal Home Loan Bank Board appointed FSLIC as receiver for Victor Savings. At that time, the only documents relating to the Sallisaw RV Park loan transaction in the loan files were the Promissory Note, Construction Mortgage and Security Agreement, Construction Loan Agreement, appraisal of Mr. Stansifer, and the HUD Standard Form 1A settlement statement showing the sale of the property from the Pennys and Bagleys to Sallisaw R.V. Limited Partnership for $1.116 million. The other settlement statements, the original loan application, and the real estate contract between Boyd and Sallisaw R.V. Limited Partnership were not in the loan file when FSLIC took over Victor Savings, but were later recovered after FSLIC investigated the loan transaction.

On July 29, 1988, the Federal Home Loan Bank Board again appointed FSLIC as receiver for Victor Savings, and FSLIC foreclosed upon the Sallisaw RV Park. The project has not been sold to a third party.

On March 18, 1988, an Involuntary Petition was filed against Stefanoff and on April 18, 1988 an Order for Relief under Chapter 7 was entered. On July 22, 1988, the FSLIC

filed this Complaint asking the Court to determine the dischargeability of its debt.

The bankruptcy court noted that in order to prevail under 11 U.S.C. § 523 (a)(2)(A)[1], the FSLIC had to prove by clear and convincing evidence that Stefanoff made a materially false representation, such false representation was made with the requisite moral turpitude or intentional wrong, FSLIC or Victor Savings reasonably relied on such false pretenses, false representation, or intentional wrong, money, property, services, or an extension, renewal, or refinancing of credit was obtained, and Stefanoff owed FSLIC a debt for such money, property, services, or extension, renewal, or refinancing of credit. In re Black, 787 F.2d 503 (10th Cir. 1986); In re Mullet, 817 F.2d 677 (10th Cir. 1987).

The bankruptcy court then found that Stefanoff, through his partner Walsh, made a materially false representation that the purchase price of the Sallisaw RV Park property was $1.116 million. The conduct of Walsh could be imputed to Stefanoff since Stefanoff not only knew of the false representation, but also authorized it and condoned it. In re Paolino, 75 B.R. 641 (Bankr. E.D. Pa. 1987); In re Cecchini, 780 F.2d 1440 (9th Cir. 1986). Walsh testified that Stefanoff originated the idea of the straw man or turnaround sale to disguise the purchase price of the Sallisaw RV Park property, while Stefanoff denied any knowledge of the false sales price. On the whole, the Court found Walsh's testimony credible and consistent in light of the testimony of other witnesses.

The bankruptcy court further found that the false representation was made with the requisite moral turpitude or wrongful intent, because Walsh and Stefanoff engaged in the

[1] Title 11 U.S.C. § 523(a)(2)(A) states that a debtor is not discharged from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained, by -- false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition".

sale deliberately to deceive Victor Savings and Victor Savings' examiners and regulators by making it appear that the purchase price of the Sallisaw RV Park property was $1.116 million rather than $270,000.00

The bankruptcy court further found that $1.116 million was in fact obtained from Victor Savings in connection with the Sallisaw RV Park real estate purchase with the remainder of the $2.5 million loan to be used for construction of improvements. Prior to making the loan, Victor Savings knew that the purpose of the loan was to buy real estate in Sallisaw. Through the real estate contract between Boyd and Sallisaw R.V. Limited Partnership, Victor Savings believed the cost of the real estate would be $1.116 million. Also, the HUD Standard Form 1A settlement statement (Exhibit 16) indicated that Victor Savings loaned $1.116 million, so that Sallisaw R.V. Limited Partnership could purchase the Sallisaw RV Park real estate for this amount.

The bankruptcy court found additionally that Stefanoff owed a debt for this money obtained. Although he was in name a limited partner and therefore not liable on the promissory note, the evidence indicated that, with regard to decisions concerning the financing for Sallisaw RV Park, he took part in the control of the business of the limited partnership to such an extent as to make him liable as a general partner in this regard under 54 O.S. § 148. Alternatively, the bankruptcy court held that even a limited partner who actively participates in perpetrating a fraud, false pretenses, or the making of a false representation under 11 U.S.C. § 523(a)(2)(A) becomes personally indebted for the money obtained by the partnership thereby. Levy v. Runnells, 66 B.R. 949, 960 (Bankr. E.D. Va. 1986).

Having found that Stefanoff had established four of the five elements necessary under § 523(a)(2)(A), the bankruptcy court went on to examine the most disputed issue in the case - whether Victor Savings relied on the false representation. The court first found that the evidence was not clear and convincing to show that Victor Savings actually relied on the false representation in making the loan. Stefanoff, as a member of the Executive Committee, arranged for approval of the loan and Stefanoff himself was aware that the representation as to the purchase price of the property was false. Therefore, Victor Savings could not be said to have relied on the false representation. Furthermore, to the extent that other officers might have been involved in the loan approval or review process, it was not clear what, if anything, they relied on. It appeared that Victor Savings made the loan because the Sallisaw RV Park property appeared to provide adequate collateral, Walsh and Stefanoff were well known and trusted individuals, and Victor Savings, by making the loan was able to dispose of one of its REO's and improve its own poor financial position.

However, the bankruptcy court pointed out that the FSLIC need not prove actual reliance by Victor Savings to establish its case under 11 U.S.C. § 523(a)(2)(A). Rather, FSLIC was deemed as a matter of law to have relied solely on the written records of Victor Savings as they existed at the time FSLIC was appointed receiver for the institution under D'Oench, Duhme & Co., Inc. v. Federal Deposit Insurance Corporation, 315 U.S. 447 (1942) (originating the doctrine that the FDIC is not bound by secret agreements concerning the repayments of loans), Langley v. Federal Deposit Insurance Corporation, 484 U.S. ___, 108 S.Ct. 396, 98 L.Ed. 340 (1987) (expanding the D'Oench doctrine to

situations where bank made misrepresentations inducing a borrower to enter into loan), In re Cerar, 97 B.R. 447 (C.D. Ill. 1989) (applying the D'Oench doctrine in the context of the reliance requirement under 11 U.S. C. § 523(a)(2)(A)), Federal Deposit Insurance Corporation v. Galloway, 856 F.2d 112 (10th Cir. 1988) (applying the D'Oench doctrine in cases of fraudulent inducement), and Mainland Sav. Ass'n v. Riverfront Associates, Ltd., 872 F.2d 955 (10th Cir. 1989) (applying the D'Oench doctrine to cases involving the FSLIC).

The bankruptcy court found the evidence was clear and convincing that, at the time FSLIC was originally appointed receiver for Victor Savings, the loan files of Victor Savings indicated that the purchase price of the Sallisaw RV Park property was $1.116 million and nothing in those loan files showed that the purchase price had been artificially inflated by a straw man or turnaround sale. Thus, under the authorities cited and particularly Cerar, FSLIC was deemed to have relied on the truth of the representation in the loan files as to the purchase price of the Sallisaw RV Park property and had met its burden of proof on the issue of reliance.

The bankruptcy court noted that another way of analyzing the D'Oench doctrine as applied in proceedings under 11 U.S.C. § 523(a)(2)(A) was to begin with the loan files themselves. Any representations contained in the loan files were deemed made to the FSLIC once the FSLIC was appointed receiver for the financial institution. If there was a materially false representation in the loan files, FSLIC had a potential action under 11 U.S.C. § 523(a)(2)(A). As a matter of law, FSLIC was entitled to rely on the truth of the representations made in the loan files and was not bound by agreements,

misrepresentations, or fraud not apparent from the loan files themselves.

The bankruptcy court concluded that the FSLIC had established its case under 11 U.S.C. § 523(a)(2)(A) with clear and convincing evidence. In addition to the credibility of Walsh's testimony, as corroborated by other witnesses, the court found particularly compelling the undisputed fact that Stefanoff received $351,626.51, half of the excess loan proceeds obtained as a result of the straw man scheme. The bankruptcy court found it inconceivable that an innocent investor would share so generously in the fruits of the sham. Rather, the strong inference from this fact was that Stefanoff played a key and valuable role in perpetrating the deception. The bankruptcy court reserved for later hearing a determination of the exact amount of FSLIC's claim arising out of the Sallisaw RV Park debt.

Further Proceedings

On March 8, 1990 Judge Covey found that the amount of the nondischargeable debt owed by Stefanoff to the FSLIC was $1,116,000.00 and granted judgment in favor of FSLIC in that amount. It ordered that, when and if the FSLIC sold the real estate known as the Sallisaw RV Park, the net proceeds from the sale would be applied as a credit in favor of Stefanoff against this judgment.

Analysis and Decision

Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for appellate review of bankruptcy rulings with respect to findings of fact. In re: Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983).

Having reviewed the evidence before the bankruptcy court and the applicable case

law, this court finds that the bankruptcy court's determination that the debt in this case was nondischargeable was not clearly erroneous. The opinion of Judge Covey was logical and well-reasoned and supported by the statutory and case law.

There is no merit to Stefanoff's claim that the trial court erred in failing to use the credit provision of 12 O.S. § 686 to calculate the judgment debt. That statute pertains to judgment in a foreclosure suit and states in part:

> In actions to enforce a mortgage, deed of trust, or other lien or charge, a personal judgment or judgment or judgments shall be rendered for the amount or amounts due.... [N]o judgment shall be enforced for any residue of the debt remaining unsatisfied as prescribed by this act after the mortgaged property shall have been sold, except as herein provided. Simultaneously with the making of a motion for an order confirming the sale or in any event within ninety (90) days after the date of the sale, the party to whom such residue shall be owing may make a motion in the action for leave to enter a deficiency judgment upon notice to the party against whom such judgment is sought or the attorney who shall have appeared for such party in such action. Such notice shall be served personally or in such other manner as the court may direct. Upon such motion the court, whether or not the respondent appears, shall determine, upon affidavit or otherwise as it shall direct, the fair and reasonable market value of the mortgaged premises as of the date of sale or such nearest earlier date as there shall have been any market value thereof and shall make an order directing the entry of a deficiency judgment.... If no motion for a deficiency judgment shall be made as herein prescribed the proceeds of the sale regardless of amount shall be deemed to be in full satisfaction of the mortgage debt and no right to recover any deficiency in any action or proceeding shall exist....
>
> In any action pending at the time this act becomes effective or thereafter commenced, other than an action to foreclose a mortgage, to recover a judgment for any indebtedness secured by a mortgage on real property and which originated simultaneously with such mortgage and which is secured solely by such mortgage, against any person or corporation directly or indirectly or contingently liable therefor, any party against whom a money judgment is demanded, shall be entitled to setoff the fair and reasonable market value of the mortgaged property less the amounts owing on prior liens and encumbrances.

Stefanoff claims the bankruptcy court used an improper setoff formula using the net

proceeds from the sale of the Sallisaw RV Park if and when it occurs as a credit. He alleges the correct formula is the fair market value as of the date of the first judicial sale by which the FSLIC became the owner in the state court proceeding, the amount of $1,800,000.00. He contends that, had the court used the proper statutory formula, the $1,116,000.00 judgment would have been discharged by the fair market value setoff of $1,800,000.00. He also claims that Victor Federal never moved for a deficiency judgment although § 686 requires this within ninety days of the sale.

The court finds that the bankruptcy court properly concluded that the FSLIC was entitled to judgment for the difference between the purchase price of $1.116 million as represented by Stefanoff in the loan documents and the actual purchase price of $270,000.00, and when the property was sold Stefanoff would receive a credit for that amount to reduce the judgment. The provisions of 12 O.S. § 686 do not apply to this action, which is not one for foreclosure. Stefanoff was not the maker or guarantor of the note; his liability as determined by the bankruptcy court was based on fraud as defined in § 523(a)(2)(A). The court held in Riverside Natl. Bank v. Manolakis, 613 P.2d 438, 441 (Okla. 1980), that § 686 applies exclusively to the debtor-creditor relationship.

In In Re Gerlach, 897 F.2d 1048, 1051 (10th Cir. 1990), the court held that under § 523(a)(2) "'the dischargeability of a fraudulently incurred debt and the measure of damages for the underlying fraud are separate and distinct questions.'" (citing Birmingham Trust Nat'l Bank v. Case, 755 F.2d 1474, 1477 (11th Cir. 1985)). The Tenth Circuit noted that the 1984 amendments to § 523(a)(2) reinforced and made more explicit the distinction between damages and dischargeability. The court held that "use of fraud to

obtain an extension of a debt originally procured nonfraudulently also renders the debt nondischargeable." Id. It concluded that "[i]f a creditor can prove by clear and convincing evidence that the debtor obtained credit through fraud, the court should declare the debt nondischargeable in an amount which it can reasonably estimate as obtained by the fraud." Id. at 1052.

In this case the bankruptcy court properly found clear evidence of credit obtained through fraud and declared the debt nondischargeable. The judgment for the difference in the purchase price as represented and the actual price was a reasonable estimate of the amount obtained by the fraud. Stefanoff's argument that FSLIC never "proved the debt owed" and thus the bankruptcy court could not enter an "arbitrary" sum to which the FSLIC was entitled is not supported by case law.

It is therefore ordered that the bankruptcy court's decisions in this matter be and hereby are affirmed.

Dated this 7th day of June, 1991.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IN RE:	)	
	)	
VERNON RAE TWYMAN, JR. a/k/a VERNON RAY TWYMAN, JR., a/k/a VERNON RAY TWYMAN,	)	Bky. No. 88-03132-C
	)	
Debtor.	)	
	)	
J. WAYNE PHILPOT and WAYNE LEASING, INC.,	)	Adv. Pro. No. 89-0030-C
	)	
Plaintiffs/Appellees,	)	
	)	
v.	)	Case No. 90-C-466-E
	)	
VERNON RAY TWYMAN, JR.,	)	
	)	
Defendant/Appellant.	)	

ORDER

Now before the court is the appeal of Vernon Rae Twyman, Jr., a/k/a Vernon Ray Twyman, Jr., a/k/a Vernon Ray Twyman ("Twyman") from the final judgment of the United States Bankruptcy Court for the Northern District of Oklahoma entered on September 12, 1989. On that date the bankruptcy court determined the non-dischargeability of two debts of Twyman, one owed to J. Wayne Philpot ("Philpot") and one to Wayne Leasing, Inc. ("WLI") pursuant to 11 U.S.C. § 523(a)(2)(A).[1]

Twyman and Philpot first met in early 1984, and Philpot hired Twyman to do some financial planning for him. In 1985 they entered into the two transactions from which the debts involved in this case arose. In August of that year, they agreed to a transfer of

[1] Title 11 U.S.C. § 523(a)(2)(A) states that an individual debtor is not discharged from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by -- false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition...."

$150,000.00 by Philpot to the account of one of Twyman's businesses, Professional Financial Coordinators, Inc. ("PFCI"). Much of the substance of this transaction was disputed, but the parties agreed that it involved the proposed purchase of certain real property, referred to as the Clayton Pond Property, from a third party. They also agreed that, in return for the transfer of funds, Twyman was to pay Philpot interest at 18% and transfer to Philpot stock allegedly worth $25,000.00 in one of Twyman's companies. Finally, the parties agreed that the Clayton Pond Property was never purchased and the $150,000.00 was never returned to Philpot, but was spent in the day-to-day operation of Twyman's business.

Twyman stated that the transfer of funds was intended as a loan to be used to pay expenses already incurred in the proposed land purchase and to obtain a line of credit with which to pay part of the consideration for the Clayton Pond Property at the closing. Twyman admitted that the funds had been spent in the daily operations of his business, but claimed this was done without his knowledge or consent. Philpot stated that Twyman told him that the money would be placed in a segregated account with one of Twyman's businesses to serve merely as "show money" and would not be spent or put at risk in any way whatsoever.

The bankruptcy court found by clear and convincing evidence that Twyman represented to Philpot that the $150,000.00 would be segregated in a separate account of PFCI and would not be spent or otherwise put at risk, such as by pledging the funds as security for a line of credit. The evidence was undisputed that, prior to actually receiving the $150,000.00, Twyman instructed an employee of PFCI in a written memorandum to

spend up to $50,000.00 of the money to "cover current payroll and IRS obligations". The memorandum further instructed the employee to transfer at least $100,000.00 from the PFCI account to the account of another corporation, FACT, so that FACT could obtain a $100,000.00 certificate of deposit with a financial institution and secure a line of credit. The employee did not place any of the funds in a certificate of deposit, but spent all of the $150,000.00 to fund the daily operations of PFCI.

The bankruptcy court concluded that, under this set of facts, the debt to Philpot was non-dischargeable under both 11 U.S.C. § 523(a)(2)(A) on the grounds of misrepresentation and under § 523(a)(4) on the grounds of fraud or defalcation by a fiduciary. The court found that Twyman's promise to segregate the funds and not to spend them or otherwise put them at risk created the requisite technical trust between Philpot and Twyman to establish fiduciary capacity under 22 U.S.C. § 523(a)(4). When the funds were diverted, at Twyman's direction, from the segregated account, the defalcation occurred.

The bankruptcy court also found by clear and convincing evidence that Twyman never intended to perform his promise to segregate and protect the $150,000.00, because he instructed his employee to do otherwise before the check had even been written. Twyman obtained the funds through a material misrepresentation, the promise to segregate and protect the $150,000.00, and Philpot reasonably relied upon this false representation.

The second transaction at issue arose at the end of 1985. Pursuant to Twyman's advice, Philpot formed WLI in 1984 and became the sole shareholder of the corporation. The parties dispute whether Twyman or PFCI, his corporation, was hired to manage WLI.

The business of WLI was to purchase office furniture and equipment and lease it to third parties, including Twyman's companies, to generate investment tax credits which could be used under federal tax law to reduce Philpot's income tax liability.

In December of 1985, WLI and PFCI entered into an agreement, partially reduced to writing, in which PFCI agreed to sell to WLI office furniture and equipment valued at $287,985.00. The parties dispute how much, if any, of this furniture and equipment had been purchased by Twyman on or before December of 1985 and how much was to be purchased in the future. WLI agreed to lease the furniture and office equipment back to PFCI. WLI paid $43,197.75, 15% of the purchase price, to PFCI on December 26, 1985. Twyman or PFCI was to obtain the financing for WLI for the remainder of the purchase price.

WLI never received a bill of sale for any of the furniture and equipment, no leases of such equipment from WLI back to PFCI were executed, and no financing was obtained for the remainder of the furniture and office equipment. PFCI retained the $43,197.75 and spent it on daily operations of business, and Philpot received nothing in return but Twyman's promise that he would repay the money. WLI argued that the debt of $43,197.75 was non-dischargeable under § 523(a)(2)(A), because misrepresentation was involved and under §523(a)(4), because Twyman held the funds in a fiduciary capacity and defalcated them.

The bankruptcy court rejected WLI's argument that § 523(a)(4) applied to this set of facts. The transaction at issue involved a contract to purchase and lease back certain office furniture and equipment and did not involve the creation of the requisite technical

trust relationship between any of the parties, as no one agreed to hold the $43,197.75 for WLI.

However, the bankruptcy court held that the $43,197.75 debt was non-dischargeable under § 523(a)(2)(A), because Twyman, as president of PFCI, had no intention of carrying out the proposed sale and lease back transaction at the time he negotiated and entered into it on behalf of PFCI, but rather intended that the $43,197.75 be spent on the daily operations of PFCI, which was experiencing severe cash flow difficulties. The court determined that the weight of the evidence indicated that Twyman knew that PFCI was in financial difficulty at the time the transaction was entered into and the $43,197.75 was used immediately to pay off existing debts; no bill of sale for furniture was ever transmitted by PFCI to WLI and no leases were executed; PFCI or Twyman failed to secured financing for the balance of the purchase price; PFCI owned little, if any, furniture and office equipment purchased within ninety (90) days which could have been sold to WLI and leased back to generate investment tax credits for WLI under applicable federal tax law; and PFCI did not have the financial resources to purchase $287,985.00 of furniture and office equipment in early 1986 in order to comply with the agreement between the parties.

From this evidence the court inferred that Twyman never intended to comply with the sale and lease back agreement and entered into it in bad faith on behalf of PFCI in order to obtain needed cash for the daily operations of the company. Twyman failed to introduce evidence which would contradict this inference. The bankruptcy court also found that WLI reasonably relied on Twyman's false representation.

At trial the court reserved the issue of whether and to what extent Philpot already had been compensated for the $43,197.75 debt by repossessing and selling certain furniture and office equipment of PFCI.

Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for appellate review of bankruptcy rulings with respect to findings of fact. In re: Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983).

Having reviewed the evidence before the bankruptcy court and the applicable case law, this court finds that the bankruptcy court's determination that the debts in this case were non-dischargeable was not clearly erroneous. The opinion of Judge Covey was logical and well-reasoned and supported by the applicable statutory and case law.

There is no merit to Twyman's argument that Philpot's course of conduct following his knowledge of Twyman's breach of representations constituted waiver of or worked to estop a claim of reliance upon the alleged fraud, as discussed in Steiger v. Commerce Acceptance of Okla. City, Inc., 455 P.2d 81 (Okla. 1969). Steiger involved a suit for judgment on promissory notes endorsed with recourse and supported by defendants' personal guarantees. The defendants raised the defense that the plaintiff had represented at the time the notes were signed that suit would be brought on delinquent debts before recoursing the paper to defendants or holding defendants as guarantors. However, the court found that the defendants had full knowledge that the paper was being recoursed before resources were used in standard collection efforts and legal remedies, and they acquiesced in this practice for months without complaint. The court concluded that this

conduct following knowledge of the breach of the agreement constituted a waiver of rights or worked to estop a claim of reliance on alleged fraud, and granted judgment to plaintiff.

It is true that Philpot accepted a promise from Twyman to repay the debt and accepted interest payments on it after the fraud was discovered and treated the transaction as a loan on his 1987 income tax returns. However, in Steiger estoppel was used by the court to achieve an equitable result. In the case at bar, the remedy of estoppel should not be applied to reward Twyman for his fraudulent misconduct and relieve him of debts justly owed to Philpot and WLI. Additionally, the court does not find reasonable reliance by Twyman on Philpot's change of position or prejudice resulting from Philpot's acts, essential elements of estoppel under Oklahoma case law. Western Contracting Corp. v. Sooner Construction Co., 256 F.Supp. 163, 168 (W.D.Okla. 1966).

There is also no merit to Twyman's claim of an offset on the debt owed, as the parties could not produce evidence as to any amount of offset claimed.

It is therefore ordered that the bankruptcy court's decisions in this matter be and hereby are affirmed.

Dated this 1st day of June, 1990.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

KARL G. OLTMANNS, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	)	Civil No.: 90-C-281-C
UNITED STATES OF AMERICA, Counterclaimant, v. KARL G. OLTMANNS, HOWARD G. SHIPP, CHRIS McGLORY and JULIUS A. LEACH, Counterdefendants.	)	

FILED
JUN 7 1991
Jack C. Silver, Clerk
U.S. DISTRICT COURT

STIPULATION FOR DISMISSAL

It is hereby stipulated and agreed that the complaint filed against the United States and the counterclaim filed against counterdefendant Karl Oltmanns in the above-entitled case be dismissed with prejudice, the parties to bear their respective

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costs, including any possible attorneys' fees or other expenses of this litigation.

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Attorney for the United States

DATED: 6-6-91, 1991

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

KARL G. OLTMANNS, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	)	Civil No.: 90-C-281-C
UNITED STATES OF AMERICA, Counterclaimant, v. KARL G. OLTMANNS, HOWARD G. SHIPP, CHRIS McGLORY and JULIUS A. LEACH, Counterdefendants.	)	

STIPULATION FOR DISMISSAL

It is hereby stipulated and agreed that the counterclaim in the above-entitled case filed against counterdefendant Howard Shipp be dismissed with prejudice, the parties to bear their

respective costs, including any possible attorneys' fees or other expenses of this litigation.

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DATED: May 31, 1991

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

COMPUTONE, INC., an Oklahoma corporation, Plaintiff, vs. DAT SERVICES, INC., an Oregon corporation; and AL JUBITZ, individually, Defendant.	)	No. 90 C-188 E

FILED

JUN 7 1991

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE AS TO ALL CLAIMS

On motion of all parties, the Complaint, and all other claims for relief whatsoever herein are hereby dismissed with prejudice, with each party to bear his or its own attorneys' fees, costs, and expenses.

DATED this 7 day of June, 1991.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 7 1991

Jack C. Silver, Clerk
U.S. DISTRICT COURT

DAVID ALEXANDER, Plaintiff,	)	
vs.	)	No. 90-C-16-E
MJA, INC., d/b/a THE BAGELRY, MURLE J. ATHERTON, Defendant.	)	

ADMINISTRATIVE CLOSING ORDER

The Defendants having filed their petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within thirty (30) days of a final adjudication of the bankruptcy proceedings the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

ORDERED this 7th day of June, 1991.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 7 1991

Jack C. Silver, Clerk
U.S. DISTRICT COURT

STANDARD FEDERAL SAVINGS BANK, Plaintiff, vs. ALEXANDER J. STONE, PROFESSIONAL INVESTORS INSURANCE GROUP, INC., PROGRESSIVE ACCEPTANCE CORPORATION; UNION PLANTERS INVESTMENT BANKERS CORPORATION; UNION PLANTERS INVESTMENT BANKERS GROUP, INC.; INVESTMENT GROUP MORTGAGE CORPORATION; UNION PLANTERS CORPORATION; and UNION PLANTERS NATIONAL BANK, Defendants.	)	Case No. 89-C-878-E

J U D G M E N T

This cause came on to be heard at a trial by jury which concluded on March 25, 1991, and from which the Court enters a judgment as follow:

1. At the close of the proof, the Court ruled that Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc., Investment Group Mortgage Corporation, Union Planters Corporation and Union Planters National Bank were liable to the Plaintiff under Counts 11 and 13 of the Complaint. By its verdict, the jury determined that the Plaintiff suffered no damages for its claims under Counts 11 and 13 of the Complaint.

2. By its verdict, the jury decided that the Defendant Alexander J. Stone had no liability to the Plaintiff for any of the claims set forth in the Complaint.

3. By its verdict, the jury decided that the Defendants Union Planters Corporation and Union Planters National Bank had no liability to the Plaintiff pursuant to Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, 15, and 16 of the Complaint.

4. By its verdict, the jury decided that the Defendant, Professional Investors Insurance Group, Inc., had no liability to the Plaintiff under Counts 2, 3, 4, 6, 8, 9, 10 and 14 of the Complaint.

5. By its verdict, the jury decided that the Defendants Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc. and Investment Group Mortgage

Corporation had no liability to the Plaintiff pursuant to Counts 2, 4, 6, 8, 10, 12 and 14 of the Complaint.

6. By its verdict, the jury decided that the Defendants Professional Investors Insurance Group, Inc., Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc. and Investment Group Mortgage Corporation were jointly and severally liable to the Plaintiff under Count 1 of the Complaint, and awarded damages of $200,000.00. Pursuant to 18 U.S.C. §1964(c), these damages are trebled.

7. By its verdict, the jury decided that the Defendants Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc. and Investment Group Mortgage Corporation were jointly and severally liable to the Plaintiff under Count 3 of the Complaint, and awarded damages of $100,000.00. Pursuant to 18 U.S.C. §1964(c), these damages are trebled.

8. By its verdict, the jury decided that the Defendants Professional Investors Insurance Group, Inc., Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc. and Investment Group Mortgage Corporation were jointly and severally liable to the Plaintiff under Count 5 of the Complaint, and awarded damages of $200,000.00. Pursuant to 18 U.S.C. §1964(c), these damages are trebled.

9. By its verdict, the jury decided that the Defendants Professional Investors Insurance Group, Inc., Union Planters Investment Bankers Corporation, Union Planters Investment Bankers

Group, Inc. and Investment Group Mortgage Corporation were jointly and severally liable to the Plaintiff under Count 7 of the Complaint, and awarded damages of $200,000.00. Pursuant to 18 U.S.C. §1964(c), these damages are trebled.

10. By its verdict, the jury decided that the Defendants Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc. and Investment Group Mortgage Corporation were jointly and severally liable to the Plaintiff under Count 9 of the Complaint, and awarded damages of $100,000.00. Pursuant to 18 U.S.C. §1964(c), these damages are trebled.

11. By its verdict, the jury decided that the Defendants Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc. and Investment Group Mortgage Corporation were jointly and severally liable to the Plaintiff under Count 15 of the Complaint and awarded damages of $1,500,000.00.

12. By its verdict, the jury decided that the Defendants Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc. and Investment Group Mortgage Corporation were jointly and severally liable to the Plaintiff under Count 16 of the Complaint and awarded damages of $500,000.00.

13. By its subsequent verdict on the issue of whether the Plaintiff was entitled to recover punitive damages from the Defendants Union Planters Investment Bankers Corporation, Union

Planters Investment Bankers Group, Inc. and Investment Group Mortgage Corporation under Count 15 of the Complaint, the jury decided that the Defendants Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc. and Investment Group Mortgage Corporation were jointly and severally liable to the Plaintiff for punitive damages under said Count 15 of the Complaint and awarded punitive damages of $2,000,000.00.

14. By its subsequent verdict on the issue of whether the Plaintiff was entitled to recover punitive damages from the Defendants Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc. and Investment Group Mortgage Corporation for punitive damages under Count 16 of the Complaint, the jury decided that the Defendants Union Planters Investment Bankers Corporation, Union Planters Investment Bankers Group, Inc. and Investment Group Mortgage Corporation were jointly and severally liable to the Plaintiff for punitive damages under said Count 16 of the Complaint and awarded punitive damages of $1,600,000.00.

15. Pursuant to 18 U.S.C. §1964(c), as a result of the jury having determined liability pursuant to 18 U.S.C. §1962 under Counts 1, 3, 5, 7, and 9 of the Complaint, the Court will conduct further proceedings to determine the amount, if any, of attorneys' fees and costs of the Plaintiff to be paid, jointly and severally, by the Defendants Professional Investors Insurance Group, Inc., Union Planters Investment Bankers Corporation, Union

Planters Investment Bankers Group, Inc. and Investment Group Mortgage Corporation.

16. No judgment for or against Progressive Acceptance Corporation is contained in this Judgment, as the automatic stay in bankruptcy has not been lifted.

17. Thus, a total of $4,400,000 in actual damages was awarded by the jury against the named Defendants with a total of $3,600,000 awarded as punitive damages against such named Defendants.

18. Postjudgment interest is awarded to Plaintiff from the date of entry of this Judgment at the current legal rate of 6.09 percent per annum. Any issue of prejudgment interest is hereby reserved for determination upon proper application.

So ORDERED this 7th day of June, 1991.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 6 1991

Jack C. Silver, Clerk
U.S. DISTRICT COURT

WILLIAM J. McENERY and A. M. BELL, JR.,	)	
Plaintiff,	)	
vs.	)	90-C-568-E
EDMUND T. KENNEDY, et al.	)	
Defendants.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiffs and defendants, pursuant to Fed. R. Civ. P. 41(i)(ii), stipulate that all claims raised by the parties in the above-styled action shall be, and hereby are, dismissed with prejudice, with each party to bear their own costs herein.

Respectfully submitted,

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.

By Fred M Buxton

James C. Hodges, OBA No. 4254
Fred M. Buxton, OBA. No. 12234
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ATTORNEYS FOR PLAINTIFFS
WILLIAM J. McENERY, JR. and
A. M. BELL, JR.

32

Matthew J. Kane, Jr.
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Edmund T. Kennedy
5709 N. Florida
Oklahoma City, OK 73118

ROGERS AND BELL

By _____
Robert S. Farris
ROGERS AND BELL
P.O. Box 3209
Tulsa, Oklahoma 74101

ATTORNEYS FOR FRANCIS W. LANE, EDMUND KENNEDY WARD LANE, and RICHARD H. LANE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOSEPH JABBOUR, Plaintiff, vs. FARMERS INSURANCE COMPANY, INC., d/b/a FARMERS INSURANCE GROUP, Defendant.	)	No. 91-C-116-E

O R D E R

This matter is before the Court on Defendant's Motion to Require Appraisal/Motion to Stay under Federal Arbitration Act and Plaintiff's Motion for Remand. Because the Court finds that Plaintiff's Motion is dispositive, it need not consider Defendant's motion.

It is undisputed that Plaintiff filed suit in state court on September 7, 1989 asserting two causes for breach of the terms of the insurance policy, that on February 1, 1991 Plaintiff amended his petition to add a claim for bad faith breach of the policy arising out of six specific acts identified by Plaintiff, and that Defendant filed its Notice of Removal in this Court on February 25, 1991. Plaintiff urges this Court to remand the case to state court because Defendant's attempted removal is out of time. The pertinent section of the federal removal provision, 28 U.S.C. §1446(b) states that "a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than one year after commencement of the action." The basis of jurisdiction asserted by Defendant in its Notice of Removal is diversity

pursuant to 28 U.S.C. §1446. Therefore, Plaintiff argues, the one year cap applies and remand is appropriate.

In response, Defendant argues that this Court should apply the exception to the thirty-day rule of §1446 which has been carved out by case law. This case law exception permits removal after the expiration of the thirty-day period where Plaintiff's amended complaint "so changes the nature of his action as to constitute 'substantially a new suit begun that day.'" Wilson v. Intercollegiate (Big Ten) Conf., 668 F.2d 962, 965 (7th Cir. 1982), quoting Fletcher v. Hamlet, 116 U.S. 408, 410, 6 S.Ct. 426, 29 L.Ed. 679 (1886). Assuming, arguendo, that this case law exception should apply to the one-year cap as well, the Court finds that Plaintiff's additional cause of action for bad faith breach does not transform his breach of policy case into a new suit. The Court further finds that the interests of judicial economy and prevention of interference in the state court action where substantial proceedings have occurred, interests which underpin the one-year cap, are of paramount importance in the instant case. Therefore, this Court finds that this case should be remanded to Tulsa County District Court.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Remand is hereby granted.

ORDERED this 5th day of June, 1991.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LORNA WILKINS, Executrix of the Estate of Christopher J. Pahsetopah, Deceased,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA d/b/a the United States Public Health Service, Claremore Indian Hospital,

Defendants.

No. 91-C-42-E

O R D E R

This matter is before the court on Defendants' Motion to Dismiss, or in the Alternative, for Partial Summary Judgment. Defendants aver, and Plaintiff concedes that Plaintiff's claim for wrongful death should be dismissed for want of jurisdiction. The Court concurs.

IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss is hereby granted: Plaintiff's claim for wrongful death is hereby dismissed.

ORDERED this 5th day of June, 1991.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

HAP/bj

FILED

JUN 4 1991

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DON LYNN, Plaintiff, vs. SKAGGS ALPHA BETA, INC., a Delaware corporation and AMERICAN STORES COMPANY, a Delaware corporation, Defendants.	)	Case No.: 90 C 1035 B

WRITTEN STIPULATION OF DISMISSAL

COME NOW the Plaintiff Don Lynn and Defendants Skaggs Alpha Beta, Inc. and American Stores Company and hereby stipulate to the dismissal of American Stores Company, without prejudice, with each party to bear their own costs.

JACK G. ZURAWIK
Attorney for Plaintiff
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Tulsa, Oklahoma 74119
(918) 582-2500

HARRY A. PARRISH
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P. O. Box 1560
Tulsa, Oklahoma 74101-1560
(918) 584-6457

KNIGHT, WILKERSON & PARRISH

Harry A. Parrish

HARRY A. PARRISH OBA #11463
P. O. BOX 1560
TULSA, OKLAHOMA 74101-1560
(918) 584-6457

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing was mailed to the following attorney(s) of record, with sufficient postage thereon, on the 30th day of May, 1991.

Jack G. Zurawik
Attorney for Plaintiff
1401 South Cheyenne
Tulsa, Oklahoma 74119

Harry A. Parrish

HARRY A. PARRISH

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Petitioner, v. GARY L. RICHARDSON, and RICHARDSON, MEIER & ASSOCIATES, P.C. Respondents.	)	Case No.91-C-126-E ✓

FILED

JUN 4 1991

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF ENFORCEMENT

Upon the petitioner's motion for summary enforcement of the Internal Revenue Service summons served upon the respondents, Gary L. Richardson ("Richardson") and the law firm of Richardson, Meier & Associates, P.C. ("the law firm"), a hearing having been held on April 29, 1991, it is hereby ORDERED that the respondents shall appear before IRS Revenue Agent David Reynolds, or any other officer of the Internal Revenue Service designated by him, within ten days of the date of this Order to give testimony, and produce the books, records, papers, and other data described in and demanded by the summons served on the respondents on March 29, 1990.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAMS NATURAL GAS COMPANY, Plaintiff, v. GOULD OIL, INC., et al., Defendants.	Case No. 89-C-351-B

STIPULATION OF DISMISSAL

All parties in this action, through their undersigned attorneys, advise the Court that all claims have been compromised and settled, therefore all claims asserted by the parties in this action are hereby dismissed with prejudice pursuant to Rule 41(a) and (c), Fed. R. Civ. P.

Dated this 31 day of MAY, 1991.

Respectfully submitted,

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.

By: _____
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Orval E. Jones, OBA #10868
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(918)588-2700

ATTORNEYS FOR PLAINTIFF
WILLIAMS NATURAL GAS COMPANY

CROWE & DUNLEVY

By: _____

Gary W. Davis
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ATTORNEYS FOR ALL DEFENDANTS EXCEPT BOATMEN'S FIRST NATIONAL BANK OF KANSAS CITY

HOLLIMAN, LANGHOLZ, RUNNELS & DORWART

By: _____

J. Michael Medina
Suite 700 Holarud Building
10 East Third
Tulsa, Oklahoma 74103

ATTORNEYS FOR BOATMEN'S FIRST NATIONAL BANK OF KANSAS CITY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LORRINDA GRAY, Plaintiff	)	
vs.	)	Case No. 90-C-758-C
WAFFLE HOUSE, INC., a Georgia corporation, Defendant	)	

STIPULATION FOR DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Lorrinda Gray, and Defendant Waffle House, Inc. and stipulate that all claims in this case are dismissed with prejudice.

Respectfully submitted:

JONES, GIVENS, GOTCHER & BOGAN
a professional corporation

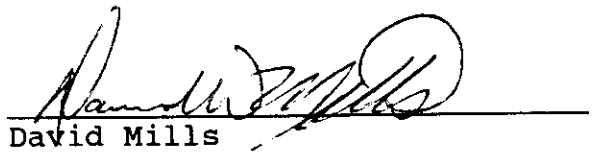
By: _____
Michael J. Gibbens
3800 First National Tower
Tulsa, Oklahoma 74103

ATTORNEYS FOR DEFENDANT WAFFLE HOUSE, INC.

LANG, JAMES & ASSOCIATES, INC.,
a professional corporation

By: _____
R. Michael Lang
5 West 22nd Street
Tulsa, OK 74114

3226003.252-27



David Mills
46 E. 16th Street
Tulsa, OK 74119

ATTORNEYS FOR PLAINTIFF,
LORRINDA GRAY

BPA:BCBSMO-5:4-24-91

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
JUN 3 1991
Jack C. Silver, Clerk
U.S. DISTRICT COURT

HILLCREST MEDICAL CENTER,
A Corporation,

Plaintiff,

vs.

BILL HOBSON and RUBY HOBSON,
Defendants/
Third Party Plaintiffs,

vs.

BLUE CROSS/BLUE SHIELD
OF MISSOURI,

Third Party Defendant.

Case No. 90-C-763-E

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Fed. R. Civ. P. 41(a), the Plaintiff, Hillcrest Medical Center, does hereby stipulate to the dismissal with prejudice of its action against the Defendants herein; and, pursuant to Fed. R. Civ. P. 41(c), Defendants/Third Party Plaintiffs, Bill Hobson and Ruby Hobson, do hereby stipulate to the dismissal with prejudice of their Third Party Petition against Blue Cross/Blue Shield of Missouri, Third Party Defendant herein.

WORKS, LENTZ & POTTORF, INC.

By _____
Mark G. Robb
1717 South Boulder, Suite 200
Tulsa, Oklahoma 74119
Attorneys for Plaintiff

NICHOLS, NICHOLS & KENNEDY

By _____
Kurt M. Kennedy
2506-A East 21 Street
Tulsa, Oklahoma 74114
Attorneys for Defendants/
Third Party Plaintiffs

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KENNETH D. YATES; LUCINDA L. YATES; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma,

Defendants.

FILED

JUN 3 1991

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-475-E

DEFICIENCY JUDGMENT

This matter comes on for consideration this 31 day of May, 1991, upon the Motion of the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, for leave to enter a Deficiency Judgment. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendants, Kenneth D. Yates and Lucinda L. Yates, appear neither in person nor by counsel.

The Court being fully advised and having examined the court file finds that a copy of Plaintiff's Motion was mailed to Kenneth D. Yates, Route 4, Box 323D, Broken Arrow, Oklahoma 74014 and Lucinda L. Yates, 8318 East 119th, Bixby, Oklahoma 74008, and all counsel and parties of record.

The Court further finds that the amount of the Judgment rendered on February 5, 1990, in favor of the Plaintiff United States of America, and against the Defendants, Kenneth D. Yates and Lucinda L. Yates, with interest and costs to date of sale is $60,402.84.

The Court further finds that the appraised value of the real property at the time of sale was $36,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered February 5, 1990, for the sum of $31,878.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 1st day of April, 1991.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Kenneth D. Yates and Lucinda L. Yates, as follows:

Principal Balance as of 2-5-90	$45,872.45
Interest	11,291.11
Late Charges to Date of Judgment	338.40
Appraisal by Agency	425.00
Management Broker Fees to Date of Sale	614.00
Abstracting	320.00
1988 Taxes	556.14
1989 Taxes	597.00
Publication Fees of Notice of Sale	163.74
Court Appraisers' Fees	225.00
TOTAL	$60,402.84
Less Credit of Appraised Value -	36,000.00
DEFICIENCY	$24,402.84

plus interest on said deficiency judgment at the legal rate of 6.07 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Kenneth D. Yates and Lucinda L. Yates, a deficiency judgment in the amount of $24,402.84, plus interest at the legal rate of 6.07 percent per annum on said deficiency judgment from date of judgment until paid.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
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PB/css